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ILI Newsletter

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Editorial

After almost six years of conflict, civilians continue to bear the brunt of the brutal violence waged by warring parties in the Syrian Arab Republic. Government and pro-government forces continue to attack indiscriminately civilian objects, including educational institutions, hospitals and places of worship. The crisis has been described as the worst humanitarian crisis of the 21st Century, which has caused untold suffering for men, women and children. The conflict in Syria between the government of Bashar al-Assad and various other forces, which started in the spring of 2011, continues to cause displacement within the country and across the region. By the end of 2016, an estimated 7.6 million people were internally displaced and 5 million Syrians had fled the country since the conflict began. The refugee situation caused by the Syrian conflict is dire, and it has placed enormous strain on neighboring countries. Lebanon, Jordan, Iraq, Egypt, and Turkey host massive numbers of Syrian refugees and Syrians have been seeking protection beyond these countries in increasing numbers. After six deadly years the Syrian conflict shows no sign of abating. More than half the Syrian population now lives in extreme poverty in or outside the country. The Syrian crisis has posed hard problems for humanitarian ethics. Despite some positive progress on expanding direct humanitarian access by international agencies, there has been no significant breakthrough in the tightly controlled system of humanitarian management. As the civil war has dragged on, its violence has become more widespread, systematic and extreme. The conflict has also become more intractable, threatening the peace and stability of the entire Middle East. Syria's civil war now threatens the peace and stability of the entire Middle East. Those who are responsible for such grave violations of international human rights and humanitarian law across the country must be tried by the International Criminal Court. Repeated vetoes of draft resolutions and even the mere threat of a veto by the permanent members of the Security Council have stalled negotiations and rendered the Security Council largely passive in the face of mass atrocity. The Syrian crisis has seen a return to a divided UN Security Council. In the absence of great power unanimity, UN humanitarian leaders will have to develop a strong humanitarian legitimacy of their own and an alternative mechanism to address effectively the present humanitarian crisis.

Manoj Kumar Sinha

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NEW PRESIDENT OF I L I

Hon'ble Mr. Justice J. S. Khehar
Chief Justice of India / President, ILI

Hon'ble Mr. Justice Jagdish Singh Khehar has been appointed as the 44th Chief Justice of India and the President (Ex-Officio) of the Indian Law Institute on January 4, 2017.

Born on August 28, 1952, His Lordship graduated in science from Government College, Chandigarh in 1974. He acquired his LL.B. degree in 1977 and LL. M. degree in 1979 from Panjab University, Chandigarh. His Lordship was awarded with a gold medal for securing first position in the University.

Enrolled as an Advocate in 1979 His Lordship practiced law mainly in the Punjab and Haryana High Court, Chandigarh, Himachal Pradesh High Court, Shimla and the Supreme Court of India, New Delhi. His Lordship was appointed as Additional Advocate General, Punjab, in January 1992, and then as Senior Standing Counsel, Union Territory, Chandigarh.

His Lordship was elevated to the Bench of High Court of Punjab and Haryana, at Chandigarh, on February 8, 1999. His Lordship was appointed as Acting Chief Justice of the Punjab and Haryana High Court twice i.e., from August 2, 2008 and again, from November 17, 2009.

His Lordship was elevated as Chief Justice of the High Court of Uttarakhand on November 29, 2009 and thereafter he was transferred as Chief Justice of High Court of Karnataka, where he assumed his office on August 8, 2010.

Justice Khehar has delivered several landmark judgments including the 2G spectrum and NJAC judgments since he became a Supreme Court judge. His Lordship was elevated as Judge of the Supreme Court of India on September 13, 2011. He is the first Sikh Chief Justice of India. He will hold office till August 28, 2017.

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ACTIVITIES AT THE INSTITUTE

National Assessment and Accreditation Council (NAAC) Visit

The Indian Law Institute, Delhi has been accredited with 'A' grade by the National Assessment and Accreditation Council (NAAC). The Institute achieved a CGPA of 3.35 on a 4 point scale. The Institute has been assessed and accredited on the basis of the NAAC Peer Review Team's report in the 23rd meeting of the Standing Committee held on March 28, 2017 at Bengaluru. The result of the assessment will remain valid for next five years.

The NAAC Peer Team under the Chairmanship of Hon'ble Mr. Justice N.N. Mathur, along with members, Professor T.V. Subba Rao, Professor M.K. Padalia, Professor P. Ishwara Bhat and Professor I. Ramabrahman visited the Institute from March 6-8, 2017.

They were given a warm welcome by Professor Manoj Kumar Sinha, Director, along with the faculty and staff members of ILI on March 6, 2017. The team visited different sections of the Institute and inspected the Institute's infrastructure pertaining to academic, examination, information technology, library and its resources, general administration *etc*. They personally visited cabins/rooms of faculty members, server room, classrooms, library information resource center, publication section, annexe and library. They conducted detailed discussions with the staff of concerned sections.

Hon'ble Mr. Justice N.N. Mathur and Professor T.V. Subba Rao had detailed interactions regarding library and IT infrastructure, student support and progression, assessment of governance leadership and management with the concerned staff and faculty.

Professor M. K. Padalia, Professor P. Ishwara Bhat and Professor I. Ramabrahman conducted discussions regarding curricular developments and aspects, teaching and learning aspects, innovations and best practices, research consultancy and extension and examination related aspects.

The team also had one-to one interactions with the faculty members, non-teaching staff, students, alumni, parents, registrar and other officials. Earlier, the Institute submitted its self study report to NAAC on October 19, 2016 for institutional accreditation under cycle one.

Indian Law Institute welcomes the NAAC Team

NAAC team members addressing ILI staff and students

Document inspection at the examination section

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NAAC team visit to the ILI Library

NAAC Team Members with Prof. (Dr.) Manoj Kumar Sinha

NAAC team visit to the IT department

National Workshop on Environmental Laws: Contemporary Issues and Challenges

The Indian Law Institute conducted an interdisciplinary workshop on "Environmental Laws: Contemporary Issues and Challenges" from February 6- 11, 2017 at the Institute.

Considering the environment degradation in the present scenario and the consequent health and economic crisis, the present workshop addressed this deplorable state of affairs especially when right to health is a fundamental human right.

The focus of the workshop was on specific issues relating to environment through the lenses of corporate law, human rights law, intellectual property law, criminal law, history, philosophy, religion and other relevant fields in not only cultivating environmental awareness but also reflecting on the scale of the environmental crisis around the world.

The workshop provided a platform for academicians and professionals from the realms of law, science, education, environmental studies, sociology and other related fields, to present papers and engage in discourses relevant to contemporary environmental issues and its effects on human welfare and progress.

Hon'ble Mr. Justice Swatanter Kumar, Former Judge, Supreme Court of India and Chairperson, National Green Tribunal was the chief guest at the inaugural function.

Hon'ble Mr. Justice Swatanter Kumar, Prof. (Dr.) Manoj Kumar Sinha, Mr. Suresh Chandra, Mr. Shreenibas Chandra Prusty, Mr. Stanzin Chostak at the inaugural session. (From left)

The workshop consisted of two sessions each spread over a period of five days. Distinguished speakers like Professor Ved P. Nanda, John Evans University Professor, Thompson G. Marsh Professor of Law, Strum College of Law, University of Denver, US, Professor (Dr) Amin Rosencranz, Professor of Law and Public Policy, Jindal Global Law School, Professor (Dr.) Usha Tandon, Professor- in- Charge, Campus Law Centre, University of Delhi, Professor (Dr.) Manjula Batra, Former Dean, Faculty of Law, Jamia Millia Islamia, Delhi, Professor (Dr) Lavannya Rajamani, Center for Policy Research, Professor (Dr.) Nuzhat Parveen Khan, Head and Dean, Faculty of Law, Jamia Millia Islamia, Dr. Usha Ramanathan, Independent Researcher, Dr. Shabnam Mahlawat Assistant Professor (Sr.), Faculty of Law, University of Delhi, Dr. Stellina Jolly, Assistant Professor, South Asian University, Dr. Meena S. Panicker, Assistant Professor, Faculty of Law, University of Delhi, Ms. Shibani Ghosh, Public Interest Lawyer, Fellow Center for Policy Research, Mr. Ritwick Dutta, Advocate spoke on broad themes like;

- International Environmental Law
- Sustainable Development *vis-a-vis* Environmental Impact Assessment
- Environmental Constitutionalism
- Climate Change and Transfer of Technology
- Corporate Responsibility and the Environment
- Human Rights and the Environment

The workshop offered a forum for fruitful interactions for the graduate and post-graduate students of environmental law, researchers, advocates, scientists, policy makers, NGOs working in the area of environmental protection with resource persons from academia, Ministry of Environment Forest and Climate Change,

Group photograph of participants of the workshop with Justice Swatantra Kumar, Director and faculty members of ILI.

National Green Tribunal, Central Pollution Control Board, Chief Inspector of Factories, and grass root NGOs. Upon successful completion of the workshop, the participants were awarded certificates by the Institute. Mr. Stanzin Chostak was the coordinator for this programme.

Workshop on Decoding the Digital Project

The Indian Law Institute organised a two day workshop on March 3-4, 2017. The workshop provided an extensive introduction to the digital project with the objective of developing a critical understanding of the emerging issues and concerns. In the recent years, technology has come to occupy a central role in interpersonal interactions as well as the interaction between individuals and the state. The emerging trends of technological use in diverse sectors and the advent of the age of the digital have been celebrated with an uncritical zeal. The digital, it is imagined, will usher in an era of transparency and "transform India into a digitally empowered society and knowledge economy." However, the implications of the interface of digital with state policy are little explored or understood.

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Mr. Shyam Divan and Dr. Usha Ramanathan at the workshop on Decoding the Digital Project

The Unique Identification Project (UID), with its use of biometrics and the seeding of the UID number in multiple data bases, constitutes one starting point in interrogating and understanding the digital project.

In the last few years, the UID has widely permeated the relationship of citizenry with the state as well as private entities. Besides the UID, the National Population Register, DNA data basing proposal, National Intelligence Grid and the GST Network are some other projects which need to be located within these developments.

It is important to decode multiple aspects of the digital project in order to situate and understand the process which has, for instance, produced the experiments with financial inclusion and cashless or less-cash economy.

During the course of the workshop, the participants were introduced to the above issues through cases and materials. The workshop will be conducted by Dr. Usha Ramanathan along with other experts in the field. Dr. Jyoti Dogra Sood, Associate Professor and Latika Vashist, Assistant Professor were the organisers of the workshop.

National Conference on Competition Law and Policy: Problems and Prospects

The Indian Law Institute in collaboration with the Competition Commission of India (CCI) conducted a National Conference on "Competition Law and Policy: Problems and Prospects" on March 18-19, 2017. Hon'ble Justice B.S. Chauhan, Chairperson, Law Commission of India inaugurated the conference. Speaking on the occasion, Justice Chauhan opined that the anti monopolistic sentiments had always been very dominant in the country and the transition from Monopolies and Restrictive Trade Practices Act, 1969 to Competition Act, 2002 was a momentous transformation towards pro – competition scenario in India.

Hon'ble Dr. Justice B.S. Chauhan addressing the participants at the inaugural ceremony

Ms. Smita Jhingran, IRS, Secretary CCI gave special address as a special guest. She emphasized on the four pillars upon which the foundation of Competition law rests: anti- competitive agreements, abuse of dominant position, combinations including mergers and acquisitions and competition advocacy.

Lalit Bhasin, Senior Advocate and President, Society of Indian Law Firms delivered the keynote address. During this session Hon'ble Dr. Justice B.S. Chauhan, Chairperson, Law Commission of India also

inaugurated the book, "Copyright Law in the Digital World." The book is edited by Professor (Dr.) Manoj Kumar Sinha and Dr. Vandana Mahalwar.

Ms. Smita Jhingran with Hon'ble Dr. Justice B.S. Chauhan at the Book Inauguratin.

The conference included six technical sessions spread over two days in which papers were presented by the participants on the Competition law from different perspectives. The major highlight of the conference was a panel discussion by the eminent experts in the field of Competition law. During the panel discussion on the theme 'Evolution of Jurisprudence of Competition Law in India', Mr. Manoj Pandey, Adviser, Competition Commission of India shared his experiences on the transformation and standpoint of CCI with help of illustrative cases. Professor V. K. Dixit, Former Professor, University of Delhi, speaking on the theme, 'Compliance and Effects of Orders of CCI' elaborated on the price - discriminatory tactics of the firms and the controversies surrounding public procurement.

Professor S. N. Singh, Former Professor and Dean, University of Delhi also expressed his opinions on the present economic scenario, that Competition Act, 2002 was a welcome change from MRTP Act, 1969.

Hon'ble Justice Anil R. Dave, Former Judge, Supreme Court of India, the chief guest, delivered the valedictory address and emphasised on the importance of strengthening competition advocacy mechanism in India.

The vote of thanks was proposed by Dr. Vandana Mahalwar as the coordinator of the conference. Dr. Susmitha P. Mallaya, organising secretary, also briefly acknowledged the contribution of the CCI team and the enthusiasm shown by the participants. The programme concluded with the distribution of certificates by the chief guest and singing of National Anthem.

Judicial Consultation on Bail Related Matters

The Law Commission of India and the Indian Law Institute jointly organised "One Day Judicial Consultation on Bail Related Matters" on January 21, 2017. The presidential address was delivered by Hon'ble Dr. Justice B.S. Chauhan, Chairman, Law Commission of India. The opening address was delivered by Hon'ble Mr. Justice A.M. Khanwilkar, Judge Supreme Court of India. Hon'ble Mr. Justice UU Lalit and Professor S. Sivakumar, Member, Law Commission of India, also addressed the audience on this occasion. The meeting was chaired by Hon'ble Ms. Justice Mukta Gupta, Judge, Delhi High Court. The panel of experts consisted of Hon'ble Mr. Justice Ved Pal, Former Judge, Allahabad High Court, Dr. Deepak Mishra (IPS), ADG, CRPF and Dr. Vivek Gogia, Inspector General of Police, Goa Police.

Prof. S. Sivakumar, Prof. (Dr.) Manoj Kumar Sinha, Hon'ble Dr. Justice B.S. Chauhan, Hon'ble Mr. Justice A.M. Khanwilkar, Hon'ble Mr. Justice UU Lalit and Mr. Shreenibas Chandra Prusty. (From left)

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ILI- NATIONAL HUMAN RIGHTS COMMISSION (NHRC) TRAINING PRORAMMES

I. One Day Programme for Juvenile Homes, Old Age Home and Health Officials on "Human Rights: Issues and Challenges" (January 23, 2017).

The Indian Law Institute and National Human Rights Commission(NHRC) jointly organised a one day training programme for juvenile homes,old age homes and health officials on "Human Rights: Issues and Challenges" on January 23,2017 at the Institute.

Mr.Amod Kanth addressing the participants at the training programme.

The programme involved four interactive technical sessions based on different themes namely:

- Role of NHRC in Protecting Human Rights Violations of Vulnerable Groups;
- Human Rights of Old Age Persons: Issues and Concerns;
- Protection of Human Rights of Juveniles;
- Role of Health Officials in Protecting Human Rights of Juveniles and Old Age Persons.

The speakers included Professor (Dr.) Manoj Kumar Sinha, Director, ILI, Mr. Mathew Cherian, CEO, Help Age India, Shri Amod Kanth, General Secretary, Prayas Juvenile Aid Centre Society, Dr. Rajesh Sagar, Professor, Doctor of Medicine, AIIMS.

II. One Day Programme for Media Personnel and Government Public Relation Officers on "Media and Human Rights " (February 22, 2017).

The Indian Law Institute and National Human Rights Commission (NHRC) jointly organised a one day training programme for

Media personnel and government public relation officers at the Institute on 'Media and Human Rights'. The inaugural address was delivered by the Chief Guest, Dr. Ranjit Singh, Joint Secretary (P&A), National Human Rights Commission. In his address, he emphasised that media is instrumental in reaching out to the public, imparting knowledge, decision making as well as grievance redressal.

Dr. Ranjit Singh delivering the inaugural address at the one day programme.

Welcome address was given by Professor (Dr.) Manoj Kumar Sinha, Director, ILI. Addressing the participants, he appreciated the role of media in human rights conservation and protection. Media according to him has played the role of a watchdog in protecting the rights of the citizens.

The other dignitaries who spoke on diverse issues related to the theme included Shri. Jaimini Kr. Srivastava, Deputy Director, Media and Communication, NHRC; Mr. Sudhanshu Ranjan, Journalist, Doordarshan. Mr. Shashank Shekhar, Member, DCPCR and Professor Pushpesh K. Pant, Dean, Northcap University, Gurgaon, Haryana.

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Mr. Sudhanshu Ranjan addressing the participants.

The programme was also attended and found beneficial by the students and faculty members of ILI.

Group photograph of participants of the programme with the Chief Guest, Director and faculty members of ILI.

III. Two Day Training Programme for Prison Officials on "Human Rights: Issues and Challenges" (March 20-21, 2017).

On March 20 and 21, 2017, another training programme for the prison officials was organised by ILI with NHRC on "Human Rights: Issues and Challenges". The programme consisted of four interactive technical sessions spread over two days of the programme. The programme focused upon developing knowledge and skill of prison officers actually responsible for routine management of prison activities. The speakers on the first day included Mr. Sunil Gupta, Former Law Officer, Tihar Jail; Mr. Shashank Shekhar, Member, Juvenile Justice Board, Buxar, Mr. Amod K. Kanth, Former DGP and Chairperson, DCPCR, General Secretary, Prayas, Juvenile Aid Centre Society, Delhi; Ms. Anju Mangla, Superintendent, Tihar Jail and on the concluding day, eminent speakers like Professor (Dr.) Manoj Kumar Sinha, Director, ILI; Professor G. Mohan Gopal, Director, Rajiv Gandhi Institute for Contemporary Studies, New Delhi; Sunil Gupta and Chhaya Sharma, DIG, NHRC addressed the participants. The training programme concluded with the distribution of certificates to the participants.

IV. Two Day Training Programme for Judicial Officials on Human Rights: Issues and Challenges (March, 25–26, 2017).

A two day training programme for the judicial officials on Human Rights: Issues and Challenges was jointly organised by the Indian Law Institute and NHRC on March 25 and 26, 2017 at the Institute.

Prof. (Dr.) Manoj Kumar Sinha, Mr. J.S. Kochher and Mr. Shreenibas Chandra Prusty (From left)

The programme was designed for judicial officers and district judges to bring a clear understanding of and approach towards effective implementation of human rights issues. The programme included nine technical sessions covering the following broad themes:

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- Protection of Human Rights Act, 1993, NHRC.
- Human Rights Violation: Critical Concerns and Challenges
- Role of Judicial Officers in Protecting Human Rights.
- Gender Concerns: Facilating- Justice for Victims and;
- Human Rights Defenders: Role and Relevance.

The speakers who were invited to address the participants of the training programme included Shri. Shankar Sen, Former Director General of Police, NHRC and Senior Fellow, Head, Human Rights Studies, Institute of Social Science; Justice P S Narayana, Former Judge, Andhra Pradesh High Court; Ms. Geeta Luthra, Advocate; Shri. Ravi Nair, South Asia Human Rights Documentation Centre; Professor (Dr.) B.T. Kaul, Chairman, Delhi Judicial Academy; Dr. R.R. Kishore, Advocate, Supreme Court of India; Dr. Anurag Deep, Associate Professor, ILI and Shri. P.K. Malhotra, Former Law Secretary, Department of Legal Affairs. The participants were issued certificates by the Institute after successful completion of the training.

Shri. P.K. Malhotra, Justice P S Narayana, Dr.Sanjay Dubey and Mr. Shreenibas Chandra Prusty(From left).

Monthly Discussion Series

The faculties of Indian Law Institute initiated a monthly discussion series on socio-legal issues of contemporary relevance. The first topic for discussion was *Rajbala* v. *State of Haryana* (2016) 2 SCC 445 on February 28, 2017. Four faculties of the Institute who participated as the panel member were Ms.Jupi Gogoi, Assistant Professor,Ms.Latika Vashist, Assistant Professor, Dr. Vandana Mahalwar, Assistant Professor and Dr. Anurag Deep, Associate Professor.

The discussion was followed by an interactive session between the panel members, other faculty members, Ph.D. research scholars and the LL.M. students.

SPECIAL LECTURES

Mrs. Kimberly Sexton Nick, Lawyer, Legal Affairs Section, OECD Nuclear Energy Agency (NEA) delivered a special lecture for the Ph.D. and LL.M. students on the topic "Legal Aspects of Nuclear Safety" on March 9, 2017. She is lead counsel for nuclear safety and regulation and legal representative for the NEA on standing committees and at international conferences and educational programs related to safety and regulation.

Professor Gianfranco Tamburells, Researcher, Institute of International Legal Studies Rome, Italy delivered a special lecture for the Ph.D. and LL.M. students on the topic, "Recent Developments in International Environmental Law" on March 16, 2017.

Professor Benjamin L. Ginsberg, Stanford Lecturer, Partner, Jones Day Law Firm, Stanford University, USA delivered a distinguished Public Lecture on "Trump Administration to Date, and what to Expect in the Future?" on March 27, 2017.

On this distinguished public lecture series, jointly organised by Indian Law Institute with Jindal Global Law School(JGLS),Professor Nathaniel Persily,James B.McClatchy, Professor of Law, Stanford Law School, Professor YSR Murthy,

Professor and Registrar, Jindal Global University and Dr. Sridhar Patnaik, Associate Professor, JGLS also addressed the students.

Prof. Benjamin L. Ginsberg addressing the participant

Dr. Rakesh Ankit, Assistant Professor, Centre for Law and Humanities, Jindal Global Law School delivered lectures for the Ph.D. and LL.M. students on the topics, "Constitutionalism and Representations (1919-20)" and "Constitutionalism and Autonomy (1935-37)" on March 23 and 31, 2017.

RESEARCH PROJECTS

Project from Ministry of Panchayati Raj, Government of India

The Ministry of Panchayati Raj (MoPR) has entrusted a project to the Indian Law Institute on "*A Study on Case laws relating to Panchayati Raj in Supreme Court and Different High Courts*". The study includes a gist of various high court and Supreme Court cases on the Panchayati Raj System in India. Report on the "Compilation of Judicial Pronouncements on Panchayati Raj System in India" has been submitted and follow up action in many cases has been initiated by the institute.

Project from the National Investigation Agency

The National Investigation Agency (NIA), Ministry of Home Affairs, Government of India has entrusted a project to the Indian Law Institute to prepare a Compendium of Terrorism Related cases in order to draft a Model Investigation and Procedural Manual.

The project was divided into two phases. The first phase included analysis of all the state high courts and Supreme Court decisions on terrorism. The second phase included the analysis of all the trial court decisions followed by scrutiny. A draft of the Compendium has been submitted to the NIA officials.

Project from Ministry of Law, Department of Justice

The Ministry of Law, Department of Justice has entrusted a project to the Indian Law Institute on "*Infrastructure facilities for Subordinate Judiciaries*". The study is under progress.

Project from Central Information Commission, Government of India

Central Information Commission has entrusted a project to the Indian Law Institute on "Evaluation of Transparency Audit of Public Authorities". The study is under progress.

RESEARCH PUBLICATIONS

Released Publications

- *Annual Survey of the Indian Law Institute* (Vol. LI) 2015.
- Book on *Copyright Law in the Digital World*
- Book on *Environment Law and Enforcement: The Contemporary Challenges.*
- *ILI Law Review* 2016 (Winter Issue).

Forthcoming Publications

- *Journal of the Indian Law Institute* (JILI) Vol. 58 (4) (October- December 2016).
- Book on *Right to Bail.*

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EXAMINATION

Result for the End Semester examinations for LL.M. (2/3) Year were conducted in December 2016. The result for the same was declared in first week of February.

Examinations for LL.M. (1Yr) Second trimester were conducted from February 9-17, 2017.

E-LEARING COURSES

"Cyber Law" and "Intellectual Property Rights Law"

Cyber Law

The 27th batch of three months started from January 10, 2017. A total of 56 students enrolled for this batch.

Intellectual Property Rights Law

The 37th batch of three months duration started from January 10, 2017. A total of 102 students enrolled for this batch.

LIBRARY

- The library subscribed to a new database namely, "*Economic and Political Weekly – Online (EPW Online)*" which is an online platform to access the current as well as archival issues of 'Economic and Political Weekly'. The link to access the database is *http://www.epw.in/journal/epw-archive*.
- The library subscribed to *"Lexis India"*, a database covering case laws of Supreme Court, various High Courts of India, legislations, commentaries published by Lexis Nexis, journals and also some of the international content of Commonwealth countries, United States and United Kingdom. The link to access the database is *https://www.lexisnexis.com/in/legal/search/flap.do?flapID=home&random*.

Around 140 students from Central University of Kashmir, 79 students Indian Institute of Legal Studies, University of North Bengal and 44 students from Durgapur Institute of Legal Studies, Bardhman visited the library during this period and a brief introduction was given to them about the various print as well as e-resources available in the library

VISITS TO THE INSTITUTE

- Around 140 students from Kashmir University, Department of Law, Hazratbal, Srinagar visited ILI on March 10, 2017.
- Students of Indian Institute of Legal Studies, Siliguri, Darjeeling, West Bengal visited ILI on March 22, 2017.

Prof. (Dr) Manoj Kumar Sinha with University of Kashmir, Department of Law, Hazratbal, Srinagar.

- Students of Durgapur Institute of Legal Studies, Durgapur, District, Burdwan, West Bengal visited ILI on March 22, 2017.
- Students of Jayoti Vidyapeeth Women's University (JVWU), Jaipur, Rajasthan students visited ILI on March 30, 2017.

STAFF ACTIVITIES

Sanjeev Kumar, Library Assistant, participated in Two Day Seminar on 'Changing Landscape of Scholarly Writings and Publications' on 24-25, March 2017 at the National Law University, Dwarka, New Delhi

FORTHCOMING EVENTS

- ILI will organise a National Conference on "***Intellectual Property Rights and Public Interest***" on April 7-8, 2017.
- Rajasthan State Unit of Indian Law Institute will be organising a Two Days Workshop at Udaipur on April 14 – 15, 2017. The issues to be discussed in the Workshop shall be: Alternative Dispute Resolution, Arbitration Law, Mediation, Plea Bargain *etc.*
- One day workshop on ***Dispelling Rhetorics: Law of Divorce and Gender Equality in Islam*** on April 29, 2017.
- Professor Upendra Baxi will be offering one week seminar course on "***Legal Theory: The contexts of Justification/Dejustification for Violence in a Civilized Society***" from May 8-14, 2017 at the Institute.

Admissions process for LL.M/ Ph.D. and Post Graduate Diploma Courses (2017-2018 batches) will begin from May 1, 2017 onwards. (Details available on the Institute website).

LEGISLATIVE TRENDS

THE MATERNITY BENEFIT (AMENDMENT) ACT, 2017

(28 March 2017)

The Maternity Benefit Amendment Act(the 'Act' hereinafter) regulates paid maternity leave entitlement and other related benefits for women employed in factories, mines and shops or commercial establishments employing 10 or more employees.

Key Highlights:

The Act has increased the duration of paid maternity leave available for women employees from the existing 12 to 26 weeks. This benefit could now be availed by women for a period extending up to 8 weeks before the expected date of delivery and remaining 18 weeks can be availed post childbirth. For women who are expecting after having 2 children, the duration of paid maternity leave shall be 12 weeks (*i.e.,* 6 weeks pre and 6 weeks post expected date of delivery).

It further extends 12 weeks of maternity benefit to 'commissioning mothers' and 'adopting mothers' from the date the child is handed over.

The Act has also introduced an enabling provision to 'work from home' for nursing mothers, which may be exercised after the expiry of the 26 weeks' leave period.

The Act makes mandatory provision for establishments having 50 or more employees to have crèche facility. Women employees would be permitted to visit the crèche 4 times during the day. It also makes mandatory for employers to educate women about the maternity benefits available to them at the time of their appointment.

The provisions of the Act will come into force from April1, 2017 except relating to crèche facility [Section 4(1)] which would come in force from July1, 2017.

THE ENEMY PROPERTY (AMENDMENT AND VALIDATION) ACT, 2017

(March 14, 2017)

Government notified the "Enemy Property (Amendment and Validation) Act, 2017"(the 'Act' hereinafter) to amend the Enemy Property Act, 1968 (the principal Act) and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

The Act replaces the Enemy Property (Amendment and Validation) Ordinance, 2016 promulgated by President for five times.

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Key highlights: The Act vests all rights, titles and interests over enemy property with the Custodian and declares transfer of enemy property by the enemy to be void. The Act applies retrospectively in the matter of transfers of enemy property that have occurred before or after 1968. Besides, it prohibits civil courts and other authorities from entertaining disputes related to enemy property.

THE SPECIFIED BANK NOTES (CESSATION OF LIABILITIES) ACT, 2017

(February 28, 2017)

The Act replaces the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016 promulgated on December 30, 2016 to provide in the public interest for the cessation of liabilities on the specified bank notes (old Rs 500 and Rs 1,000) and for matters connected therewith or incidental thereto.

Key highlights: Section 5 of the Act bars any person from knowingly or voluntarily, holding (more than ten notes), transferring or receiving any specified bank note after the expiry of grace period for citizens residing in India March 31, 2017 and June 30, 2017 for Indians residing outside India. For the purposes of study, research or numismatics, up to twenty-five notes can be held by a person. However, holding of such notes by any person on the direction of a court in relation to any case pending in the court is not prohibited.

Section 7 states that whoever contravenes the provisions of section 5 shall be punishable by the court of a magistrate of the first class or the court of a Metropolitan Magistrate with fine which may extend to ten thousand rupees or five times the amount of the face value of the specified bank notes involved in the contravention, whichever is higher.

LEGAL JOTTINGS

Health of the people is far more important than the commercial interests of the manufacturers

The commercial interests of manufacturers and dealers of such vehicles(two wheeler, three wheeler, four wheeler or commercial) that do not meet the Bharat Stage-IV (BS-IV) emission standards does not take primacy over the health of millions of our country men and women. Permitting such vehicles to be sold or registered on or after April 1, 2017 would constitute a health hazard to millions of our country men and women by adding to the air pollution levels in the country, which are already quite alarming. Even though the number of such vehicles may be small compared to the overall number of vehicles in the country but the health of the people is far more important than the commercial interests of the manufacturers or the loss that they are likely to suffer in respect of the so-called small number of such vehicles.

Imposing a complete ban, keeping the larger public interest in mind and the potential health hazard to millions of our country men and women due to increased air pollution, the apex court categorically mentioned that even though the manufacturers of such vehicles were fully aware that eventually from April 1, 2017 they would be required to manufacture only BS-IV compliant vehicles, but for reasons that are not clear, they chose to sit back and declined to take sufficient pro-active steps. The Supreme Court order is a welcome step towards the protection of environment, improvement of air quality and public health across the country.

M.C. Mehta v. *Union of India* 2017(4) SCALE 113 (2017) SCC decided on March, 29 201.

Article 215 does not give power to high court to punish for contempt of Supreme Court

The power to punish for contempt vested in a Court of Record under article 215 of Constitution do not extend to punishing for contempt of a superior court. Such a power has never been recognised as an attribute of a court of record nor has the same been specifically conferred upon high court under article 215 of Constitution. *A priori,* if the power to punish under article 215 of Constitution was limited to the contempt of high court or courts subordinate to high court, as per the Supreme Court, there was no way high court could justify invoking that power to punish for contempt of a superior court. The availability of power under article 129 and its plenitude was yet another reason why article 215 of Constitution could never have been intended to empower high courts to punish for contempt of Supreme Court logic was simple. Even if Supreme Court does not, despite the availability of power vested in it, invoke the same to punish for its contempt, there was no question of a court subordinate to Supreme Court doing so.

Vitusah Oberoi v. *Court of Its Own Motion* decided on January 2, 2017.

FACULTY NEWS

Manoj Kumar Sinha was invited to address on *"International Human Rights"* to the participants in Sensitization programme on Human Rights and Law for officers of DHJS(Delhi Higher Judicial Service) and DJS(Delhi Judicial Service),March 31, 2007;

Delivered a special lecture on *'Legal Research Methodology'* to Ph.D. students of WB National University of Juridical Sciences, Kolkata, March 31, 2017;

Invited to address judicial officers of Jammu and Kashmir on *"International Humanitarian Law"*, organised by Jammu Judicial Academy and International Committee of the Red Cross, Jammu, March 25, 2017.

Invited as Guest of Honour to address the participants of 7th National Moot Court Competition, organised by Geeta Institute of Law, Panipat, Haryana, March 4, 2017.

Invited as speaker on the occasion of release of the book titled *'Private International Law- South Asian States'* edited by Sai Ramani Garimella and Dr. Stellina Jolly, organised by South Asian University, New Delhi, March 1, 2017.

Delivered a special lecture on *'International Human Rights- Issues and Challenges'* Faculty of Law, Banaras Hindu University, Varanasi, February 3, 2017.

Chaired a session on *"Human Rights Institutions, Civil Society Organisations and Judiciary* in *FRAME (Fostering Human Rights Among European Policies): India Colloquium"* organised by Indian Society of International Law(ISIL) and South Asian University, New Delhi, January 31, 2017;

Invited as Guest of Honour to deliver address in one day *National Seminar on Electoral Reforms* organised by Department of Law, Jamia Milia Islamia University, New Delhi, January 28, 2017;

Invited as Chief Guest to deliver Inaugural Address in three day conference on *"2nd KIIT National Conference on International Law"*, organised by International Law Society, KIIT Law School, Bhubaneswar, January 13-15, 2017.

Invited to deliver inaugural address in an International Conference *on 'Contemporary Issues and Challenges of Human Rights in the Era of Globalisation'*, organised by Legal Services Clinic

and ADR Centre, Government Law College, Thrissur, Kerala, January 11, 2017.

Furqan Ahmad presented a paper on 'The Principles of Fiqh and Issues in Advanced Medical Science-A Contemporary Challenge from the Indian Perspective' at the *International Seminar on Islamic and Contemporary Society* organised by the Faculty of Islamic Contemporary Studies, Universiti Sultan Zainal Abidin, Kuala Nerus, Terengganu, Malaysia on March, 4-5, 2017.

Anurag Deep addressed two sessions to Judicial Officers of various District Courts on *'Criminal Justice and Human Rights'* in a sensitisation programme organised by Indian Law Institute, New Delhi with NHRC on February 26, 2017.

Chaired a session in International Conference on *"Crime Investigation : Emerging Issues & Challenges in Criminal Justice, Administration"* at Galgotia University, Greater Noida, February 4, 2017.

Paper Publication in Amity Law Review (page 43-60, volume 12, December 2016 issue) on *"Development Induced Displacement: Judicial Trends in India"*.

Jyoti Dogra Sood coordinated a two day workshop on *"Decoding the Digital Project"*, March 3-4, 2017.

Invited as resource person for the plenary session of a National Seminar cum Training programme on *"Human Rights towards Equality"* organised by Amity Law School, Noida in collaboration with National Human Rights Commission, February 28, 2017.

Vandana Mahalwar was invited to be a discussant in a session on 'Contract, Royalties and Copyright in Digital Regime' in a National Seminar on *"Changing Landscape of Scholarly Writings and Publications"* organized by National Law University Delhi, March 25, 2017.

Invited to deliver a talk on *'Law relating to Women and Reproductive Rights'* in Legal Awareness Program organized by Centre for Comparative Studies in Personal Laws, National Law University Delhi, February 24, 2017.

Invited to deliver a talk on 'Doctrine of Fair Dealing: Some Reflections' in a National Seminar cum Workshop on *Future Prospects of Intellectual Property Rights*, organized by BPS Women University Sonipat, February 7, 2017.

Deepa Kharb chaired a technical session titled 'Emerging Issues in IPR' in the National Conference on *'IPR and Public Interest'* organised by Indian Law Institute on April 7-8, 2017.

Also presented a paper on "Compromising on TRIPS Flexibilities under Trade and Investment Agreements- Global Concern for Public Health"*at the National Conference* on April 8, 2017.

Participated and presented a paper on "Emerging Jurisprudence on FRAND on Standard Essential Patents in India" in National Conference on *Corporate Law* organised by National Law University Delhi at Dwarka on March 23-24, 2017.

Latika Vashist organised the workshop on *"Decoding the Digital Project"* (conducted by Usha Ramanathan) at the Indian Law Institute on March 3-4, 2017.

CASE COMMENTS

Hussain* v. *Union of India with

Aasu* v. *State of Rajasthan

2017(3) SCALE 460

Decided on March 9, 2017

The appeals were filed against the denial of bail pending trial where appellants have been in custody for a long period. In the first case, the appellants were

in custody since August 4, 2013 on allegation of having committed an offence under section 21(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (the NDPS Act). Their bail application, pending trial was dismissed. In the second case, the appellant was in custody since January 11, 2009 and was convicted by the trial court under section 302 IPC and sentenced to life imprisonment. His bail was rejected by the high court pending appeal. Both appellants contended that they are entitled to bail which has been recognised as a fundamental right under article 21 of the Constitution. The court referred to *Akhtari Bi (Smt.)* v. *State of M.P.* (2001) 4 SCC 355 and *Surinder Singh alias Shingara Singh* v. *State of Punjab* (2005) SCC 387, with regard to grant of bail, pending appeal, which provide that if the appeal is not heard for five years, excluding delay deliberately caused by the accused, bail should normally be granted. The second case falls out of the above mentioned judgment as the pending appeal in the high court is of the year 2013. In *Abdul Rehman Antulay* v. *R.S. Nayak (1992) 1 SCC 22,* the court held that speedy trial at all stages is part of the right under article 21, it was held that if there is a violation of the right to a speedy trial, instead of quashing the proceedings, a higher court can direct conclusion of the proceedings in a fixed time. In light of these principles, the court directed that the pending trial in the first case and the appeal in the second case may be disposed of within six months.

The court felt that there is a need for further consideration of this matter in the interest of the administration of justice and for enforcement of fundamental rights under article 21. This constitutional right cannot be denied even on the plea of non-availability of financial resources. The court held that timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice. In *Imtiyaz Ahmad v. State of U.P.* 2017 (1) SCALE 164 *the court noted that the* total number of more than five year old cases in subordinate courts at the end of the year 2015 is said to be 43, 19, 693 and the number of undertrials detained for more than five years at the end of 2015 is said to be 3599. The court emphasised upon strengthening of monitoring mechanism for effective implementation of its various decisions on Bail to under trial prisoners. It suggested that the timeline for disposal of bail applications ought to be fixed by the high court and as far as possible, bail applications in subordinate courts should ordinarily be decided within one week and in high courts within two-three weeks. The Supreme Court issued a series of directions in this case and also directed the high court to take appropriate steps consistent with earlier directions in different cases to have appropriate monitoring mechanism on the administrative side as well as the judicial side for speeding up of disposal of undertrials pending in subordinate courts and appeals pending in the high courts. This judgment once again reiterates the commitment of the Indian judiciary to protection of human rights and also its sensitivity toward the rights of under trial prisoners.

Manoj Kumar Sinha

T. Ravi* v. *B. ChinnaNarasimha

2017(3) SCALE 740

Decided on March 21, 2017

The dispute in the said case pertains to an ancestral property of late Nawab Jung who died intestate. The legal heirs of Late Nawab Jung succeeded to the estate as tenants in common and not as joint-tenants. The heirs succeeded to the estate in specific shares. Mohd. Hashim Ali Khan, Son of Late Nawab and one of the heirs to the property, sold parts of the property to Bala Mallaiah, including the share which was inherited by the other co-heirs of the property. The case ultimately reached to the Supreme Court through trial court and high court and the main issue pertaining to Muslim law was that whether a co-sharer could have alienated the share of other co-sharers in the disputed property?

The Supreme Court referred to Fyzee (A.A. Fyzee, Outlines of Muhammadan Law (4th Edition, 1974). where it has been observed that general principles of Islamic jurisprudence do not contemplate administration, but a mere distribution of the estate as per the principles laid down in *Sirajiyyah*. As per the Sunni law, a testator can leave a legacy to an heir only to the extent of 1/3rd of estate and not exceeding that. After death of a person the first step is to make payment of funeral expenses, debts and legacies. Thereafter, distribution of estate among legal heirs, *firstly* to 'Sharers' (those who are entitled to a prescribed share of the inheritance), in the absence thereof, to 'Residuaries' (those who take no prescribed share, but succeed to the "residue" after the claims of the sharers are satisfied), and in case of absence of both to 'Distant kindred' (those relations by blood who are neither sharers nor residuaries).

Then the court viewed that the incidents of such joint tenancy and tenants in common as discussed in this case are further subject to the law by which parties are governed and in that context it examined the case and found no dispute with the general principles of joint tenancy and tenants in common. The court observed that in a case belonging to Muslims their law of inheritance has to be considered, in particular with respect to rights of tenants in common. Right of disposition by a testament is also different in the Muslim law. There cannot be testamentary disposition for more than 1/3rd of the property held by testator. The power of alienation in Muslim law is different from Hindu law.

The court further opined that in the incidents of disposition of property under different laws, they have to consider the personal law and then to apply the general principles of tenancy law to the permissible non-conflict zone to the personal law which holds the field for the parties to arrive at a decision. In this regard it referred to the Privy Council's leading decision *Imambandi.* v. *Mutsaddi* [(1918) L.R. 45 IndAp 73]. Wherein it was held that there is a sharp distinction between the laws that are applicable to Mohammedans and other laws with respect to its special nature. The court cautioned to apply the foreign decisions which are on considerations and conditions totally differing from those applicable to or prevailing in India. Accordingly the court opined that the courts have to be careful while applying the decision of Muslim law to a case relating to Hindu law and the foreign decisions and *vice- versa.*

Keeping in view aforesaid principle the court further proceeded with the precedent of *Syed Shah Ghulam GhouseMohiuddin* v. *Syed Shah Ahmed Mohiuddin Kamisul Quadri (died) by L.Rs* [(1971) 1 SCC 597] wherein it had been laid down that Muslim heirs are tenants in common and they succeed to their definite fraction of every part of estate of the deceased. The shares of the heirs are definite and known before actual partition. Therefore, on partition of the properties there is division by metes and bounds in accordance with specific shares of each sharer which have already been determined by law.

The court referred to the observations of the famous case *Jafri Begam* case [ILR (1885) 7 All 822] where prime roots of the theory as to the divisibility of the debt in the hands of heirs of a Muslim intestate were deliberated successfully. Where court settled that Muslim heirs are independent owners of their specific shares simultaneously in the estate and debts of the deceased, their liability fixed under the personal law is proportionate to the extent of their shares

The court further observed that the heirs of a Muslim dying intestate on whom falls the liability to discharge the debt, proportionate to their respective shares in the estate devolved, can hardly be classified as joint contractors, partners, executors or mortgagees. They are by themselves independent debtors; the debt having been split by operation of law. Inter se they have no jural relationship as co-debtors or joint debtors so as to fall within the shadow of contractors, partners, executors or mortgagees or in a class akin to

them. They succeed to the estate as tenants-in-common in specific shares.

Further, this court again referred to *Kasambhai Sheikh* v. *Abdulla Kasambhai Sheikh* [(2004) 13 SCC 385] where it had been held that succession in Mohammedan law is in specific shares as tenants in common. The court further observed that so far as voluntary alienations are concerned, which alone form the subject-matter of reference, the Mohammedan law is clear that one of the heirs of a deceased person is not competent to bind the other heirs by his acts.

The court referred a decision in *Jan Mahomed* v. *Dattu Jaffer* [(1913) 38 Bombay 449] where it has been held that Mohammedans under their own law are never joint in estate whether they live together or whether they do not. On death of a Muslim, his heirs at once become vested with the shares to which the Islamic law entitles them. They do not have to wait until the property is divided by metes and bounds. It has also been further observed that a Mohammedan heir is not a co-parcener. He has not merely a right to a defined and immediate share in each portion of the estate but if any portion of the estate is in any case marked off and divided from the rest of the estate, he has a right to an immediate share in that portion.

The court conceded that the question of adjustment of equities between the vendor and vendee upon a suit by a Muslim co-sharer for partition of the entire property held in co-ownership might properly arise, but it cannot accept the position that, while a Muslim co-sharer elects to sue for partition of some of the properties only held in co-ownership, a vendee can compel him to sue for a general partition, for the purpose of adjusting equities between the co-sharer-vendor and himself. The court viewed that an unfettered right of a Muslim co-sharer to claim partition of some of the properties only held in co-ownership, while retaining his co-ownership in the remaining properties.

Debating on the right of pre-emption which invalidates the sale to stranger even to the extent of vendor's share. Here the court referred a Full Bench of the Allahabad High Court in *Inayatullah* v. *Gobind Dayal* [(1885) ILR 7 All 775] where it had observed that right of pre-emption is closely connected with the Mohammedan law of inheritance.

After referring many precedents on various issues on law of inheritance as well as pre-emption, Supreme Court in the said case opined that sale beyond 14/104th share by Hamid Ali to BalaMalliah was void. The Mohammedan law does not recognize the right of one of shareholders being tenants-in-common for acting on behalf of others. While discharging debt also they act as independent debtors. A co-sharer cannot create charge on property of co-heir. The right of Muslim heir is immediately defined in each fraction of estate. Notion of joint family property is unknown to Muslim law. Co-heir does not act as agent while discharging debt but is an independent debtor not as co-debtor or joint debtor. Co-sharers are not defined as joint contractors, partners, executors or mortgagees. Accordingly, the appeals were allowed and impugned judgment and the decree passed by the high court was set aside.

Though the case was complicated and pertaining to various issues of Mohammedan law relating to property, the learned judges of the Supreme Court carefully distinguished the core issue of Muslim law of inheritance and accordingly decided the same with the help of sources of Mohammedan law and precedents of Supreme Court and Privy Council. They also referred the leading book of Islamic jurisprudence of *Sirajiyyah*.The judges must be appreciated for their hard work and true finding of law by distinguishing Muslim law from various other laws and foreign judgments, which is the basic principles of research. Therefore their efforts are commendable.

Furqan Ahmad

ISSN 2455-7242

Kattukulangara Madhavan* v. *Majeed

2017(4) SCALE 123

Decided on March 30, 2017

Membership of an unlawful assembly has remained a contentious issue of criminal law under the principle of joint/constructive liability. Once a person is proved to be a member of unlawful assembly mere membership is punishable under section 142 of Indian Penal Code, 1860. Is s/he automatically criminally liable for the conducts of other members committed in prosecution of common object without any evidence of *actus reus* or *mens rea* on his own part? Or is the prosecution required to prove through witnesses an *overt act* of the accused even if the membership of unlawful assembly is proved? Is the awareness of common object a matter of inference or prosecution is duty bound to prove it against each accused individually? What is the extent of liability of a member of unlawful assembly? What makes such a member inculpatory or exculpatory of the conduct of any other member? This was one of the issues in the case under comment. The facts are as under:

There was some dispute between people belonging to RSS and CPI (Marxist) party in connection with the festival at Korattikara Vishnu Bhagwati Temple in Thrissur, Kerala. In the night of March 3, 1993 'deceased Suresh Babu was travelling in a bus. When the bus reached Ottappilavu junction, a group of persons entered the bus, pulled Suresh Babu out of the bus and took him to the front side of the bus and attacked him. A1 inflicted a stab injury on the back of the left side of the chest of Suresh Babu. The deceased fell down and A1 inflicted two more stab injuries. When the deceased was struggling to stand up and escape the other accused indiscriminately beat him with a reaper and sticks. The time of attack was 08:15 pm. Suresh Babu died. The post- mortem certificate referred to 26 injuries on the body of the deceased Suresh Babu and the cause of death was stated as "the deceased died of multiple injuries sustained to chest". The trial court convicted the group of accused but the High Court of Kerala acquitted a few while making *subjective inquiry of individual role*. The high court referred to the clash between the supporters of CPI (M) and BJP workers. It held that the deceased was attacked due to political rivalry. But the high court found that there is no evidence to show that the members of the unlawful assembly (especially A3, A4, A14, A15 and A18) had a common object to commit murder of Suresh Babu. The reasoning (para 12 in judis.nic.in) given by the high court was- (a) the accused were not aware that the deceased was travelling in the bus, and (b) there was no evidence to show that they formed an unlawful assembly with a view to attack and commit his murder.

The Supreme Court through L. Nageswara Rao J rightly held that "The deceased and accused belong to two political parties opposed to each other. There were three other incidents of clashes between the rival groups. The existence of a CPI (M) office at Ottappilavu junction near incident place is proved. The accused along with others assembled and were searching for BJP workers travelling in the buses that were passing through the junction. The common object of the members of the unlawful assembly was to attack any BJP supporter who was passing through Ottappilavu junction. Unfortunately, Suresh Babu was in the bus and he was killed in the attack."

Justice S. A. Bobde, who rightly limited himself only to this issue, also explained the joint liability jurisprudence which will be a beacon in future decision making. His *ratio decidendi can be found in this statement:* "But having participated and gone along with the others, an inference whether inculpatory or exculpatory can be drawn from the conduct of such an accused. The following questions arise with regard to the conduct of such an accused:-

i. What was the point of time at which he discovered that the assembly intended to kill the victim?

ii. Having discovered that, did he make any attempt to stop the assembly from pursuing the object?

iii. If he did, and failed, did he dissociate himself from the assembly by getting away?"

Under section 149 of Indian Penal Code, 1860 the prosecution is required to prove three things beyond reasonable doubts. One, the accused was a member of unlawful assembly (section 142). Crime was committed in prosecution of common object (141/149). Prosecution is also required to address three questions raised by Justice Bobde. It must prove the absolute absence of question 2 and 3. Then the onus is shifted upon such accused to answer with some *positive* evidence the above three questions raised by Justice Bobde.

A curious onlooker or a bystander is not a member of unlawful assembly because he lacks intention to become member of unlawful assembly (section 142). Once it is proved that Z1 was member of unlawful assembly he is responsible for everything that any member does if it is done 'in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object.' There could be situations that Z1 becomes a part of unlawful assembly but s/he is not aware of the intention of other members. Suppose other members intended to kill D1 who is of different religion. Z1 has absolutely no clues that other members intend to eliminate D1 and D1 was killed. Now if Z1 argues that he was a part of unlawful assembly but not a part of killing D1 as he never shared the *mens rea* nor *actus reus*. There is no causal relation or proximity between the conduct of Z1 and the killing of D1. Are you going to hold the person Z1 guilty for no *mens rea*, no *actus reus* and no causal relation? Is this the spirit of criminal law in general and section 149 in particular? Are you presuming not only the *mens rea* and but also *actus reus* of Z1? Are you 'identifying Z1' from the conduct of other members. A type of *alter ego* principle. The answer to the queries is a strong 'yes' because constructive liability under section 149 defies the *mens rea* doctrine. Constructive liability under section 149 does not conform to C4 rule of *actus reus*. (Smith Hogan in his work on *Criminal Law*, Oxford 13th edn, while analyzing the elements of *actus reus* suggests that *actus reus* may have four elements; conduct, circumstances (Smith Hogan uses State of affairs), causal relation and consequence). It does not seeks any participation either in *actus reus* or in *mens rea* once the accused is proved to be a member of unlawful assembly and any one of them commits a crime in prosecution of common object. The concern of high court for the *mens rea* and *actus reus* of individual member of unlawful assembly for something committed in prosecution of common object was not only completely misplaced but was unnecessarily sympathetic to the accused and unjust to the victim. Penalising membership of a group has raised recent interest globally after membership of a terrorist organisation became a part of various counter terror enactments. In India the Supreme Court is reviewing a previous division bench judgement in *Arup Bhuyan* v. *State of Assam* 92011 (3) SCC 3770 which held that section 3(5) of TADA will be unconstitutional if mere passive membership is made punishable. The 'three questions' of Justice Bobde will answer the review conclusively that mere passive membership will make the member culpable for *sui generis* crime like terrorism.

Anurag Deep

Asha Ranjan* v. *State of Bihar

2017 (2) SCALE 709

Decided on February 15, 2017

The case arose out of writ petitions preferred by Asha Ranjan (and others) for transferring the entire proceedings and trial in murder and conspiracy cases from Siwan to Delhi. The petitioners had suffered immensely at the hands of gangster turned RJD leader Mohammed Shahabuddin (Asha Ranjan's journalist husband was murdered and other petitioner, Chandrakeshwar Prasad's three sons were murdered in cold blood), and now feared for their own lives. They sought his transfer from Siwan Jail in Bihar to Tihar Jail in Delhi. Shahabuddin had such a control over the area that his being behind the bars made no difference and he continued to rule over Siwan. It must be mentioned that he had already been a declared history-sheeter Type A (who is beyond reform) and had been allegedly involved in 75 criminal cases. It is axiomatic to mention that 'justice

does not stop at prison doors', meaning thereby that an imprisoned person retains all rights available to the fellow citizens except those which have been taken away expressly (*e.g.* liberty) or by necessary implication.

In the instant case of the petition for shifting the prisoner out of Bihar, the court was in a fix since the prison manuals did not talk about such a transfer! In the criminal justice system, the accused is given a whole host of rights since he is pitted against the might of the State. But in this case, the factual situation was otherwise – the state was literally at his beck and call and he was blatantly misusing his clout with impunity. In the absence of an express or implied provision of transfer, the 'judicial conscience' had to be stirred and satisfied to direct such transfer. The petitioners invoked article 21 to seek the transfer since they feared for their lives (and there was enough evidence to justify their fear). Interestingly (and this is not the first time), the prisoner (the dreaded Shahabuddin) also invoked article 21. He placed reliance on a catena of cases where right to free and fair trial was read in article 21. His counsel argued that if at all he was to be transferred, this recognized and established right of his would be violated. Thus, it was a case of two contesting parties lugging on to the same fundamental right – article 21. The court termed it as "intra-conflict" within a fundamental right.

Courts have been frequently invoked by parties in the past wherein two or more fundamental rights seem to be in conflict with each other; but there are cases where contentions of opposing parties are pegged around the same fundamental right, invoking similar constitutional provisions against each other. The court, through case law, endorsed whole heartedly the right of a fair trial to the prisoner but lamented and distinguished the present case thus: "accused has been able to by his sheer presence erode the idea of safety of a witness in court or for that matter impairs and rusts the faith of a victim in the ultimate justice and such erosion is due to fear psychosis prevalent in the atmosphere of trial, is not to be countenanced, as it is an unconscionable situation."

And, precisely, this 'unconscionable situation' prodded the 'judicial conscience' to order the transfer on the reasoning that right to fair trial is not singularly absolute from the perspective of the accused alone. It also has to take into account the social interest and the interest of the victim as well. The court was sensitive to the fact that article 142 cannot and must not be used to curtail fundamental rights; but, this was a case where competing claims within the same fundamental right had to be adjudicated by the constitutional court. Its deference to the Rule of Law and its commitment to safeguard the faith of the common man in the criminal justice administration, guided the court to order the transfer of Shahabuddin from Siwan to Tihar Jail. By ordering so, the constitutional court of the country, once again, rose to the occasion and restored the faith of the citizenry in the supremacy of the rule of law.

However, the court in order to buttress its arguments regarding fair trial, quoted extensively from precedents. It is submitted that the court could have exercised the virtue of brevity in this case. Value of a judgment is not dependent on the number of pages but in the clear articulation of the rationale. In the instant case, the court could effectively have delineated authoritatively on the 'intra-conflict' theory and the balancing or resolution of 'intra-conflict' "within the parameters of constitutional norms and sensibility and larger public interest", without perhaps marshalling case after case dealing with fair trial. It not only impedes reading but the scholarship of the judgment gets lost in the legal quagmire.

Jyoti Dogra Sood

Shyam Narayan Chouksey* v. *Union of India

2017 SCC Online 129

Decided on February 14, 2017

Through the February 14, 2017 order, the apex court modified its previous order of November 30, 2016 where it directed everybody to mandatorily rise to show respect while the national anthem is played in theatres, by clarifying that when the National Anthem

is sung or played in the storyline of a feature film or part of the newsreel or documentary, the audience need not stand.

In its November 30, 2016 order, the court while relying on article 51A, directed that when the National Anthem is sung or played, it is imperative on part of everyone present to 'show' due respect and honour to National Anthem. Furthermore, the court categorically stated that "all the cinema halls in India shall play the National Anthem before the feature film starts and all present in the hall are obliged to stand up to show respect to the National Anthem." While issuing such directions, court referred to clause (a) of article 51A in Part IV A of the Constitution, which reads as:

> It shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem.

In addition, the apex court stated that the citizens of the country must realize that they live in a nation and are duty bound to show respect to National Anthem which is the symbol of the constitutional patriotism and inherent national quality.

As the court has consistently used the term 'to show respect' throughout the order, it becomes imperative to find reasons why the apex court took a leap ahead to 'show respect' from 'to respect' (as provided under article 51A). Patriotism by way of showing respect appears to be a forced expression and not a free expression. Such directions may seem to guarantee only the 'display of patriotism' which few might find to stand in contrast with freedom of expression. It becomes imperative to mention here that article 19, along with freedom of expression, also takes into its fold the right not to express.

The order *in toto* nourishes the constitutional values, but there is a need to adopt another route to reach to the goals of cultivating the feeling of patriotism and nationalism. It is most crucial to develop the sense of patriotism in individuals and it is something that can be best inculcated at the age of early childhood.

On December 9, 2016, the court modified its order by giving exemption to the differently-abled persons from standing when the National Anthem is played. The apex court's February 14, 2017 order needs to be appreciated for the reason that it provided clarification that individuals are not obliged to rise if National Anthem is part of the movie. This clarification was much needed for some people were assaulted for not rising on the display of National Anthem during the display of movie.

Vandana Mahalwar

Narmada Bachao Andolan* v. *Union of India

2017(3) SCALE 268

Decided on February 8, 2017

The first prime minister of Independent India Pandit Jawahar Lal Nehru, described the dams and power plants as `Modern Temples', which are necessary for the nation's economic progress and the present case which is related to Sardar Sarovar Dam popularly known as *Narmada Bachao Andolan* case, (named after the organisation spearheading the cause of the people displaced by the Sardar Sarovar Project). So far countless judgments have been passed since the case came before the Supreme Court for the first time in 1997. The case has been in the limelight since many years and the major issues related to it varied from contempt of court *vis-a-vis* freedom of speech and expression. The enormity of the case can be gauged from the fact that from the year 1997 to 2017 there have been many Supreme Court judgments and orders directed dealing with one or the other aspect of the case. This reminds us that like the Bhopal 'legal saga' the present case too is continuing at various courts of the land. The present order has been passed by the supreme court of India in exercise of its jurisdiction under article 142 of the Constitution of India, so as to arrive at an equitable settlement, for the rehabilitation of the 'project affected families', consequent upon the implementation of the Sardar Sarovar Project. In the wake of large scale corruption in relief and rehabilitation of Sardar Sarovar dam 'project affected families' that was probed by Justice S. S. Jha

Commission the above order takes into consideration the issue of determination of compensation, rehabilitation claim and other entitlements towards all 'project affected families' many of whom were duped by middlemen as stated in the commission's report.

Since the chain of causation of the present case lies in 'development' the author would like to look at the present case from a post-structuralist narrative of development and see how our understanding of sustainable development can help us relate with environmental issues including displacement. The discourses of development can be situated within the framework of what Michel Focoult calls the 'problematization of poverty'. Arturo Escobar who articulates a poststructuralist political economy of ecology and biology defines development thus: "Development" continues to reverberate in the social imaginary of the states, institutions, and communities, perhaps more so after the inclusion of women, peasants, and nature into its repertoire and imaginative geographies."

Let us look at how the concept of sustainable development through whose adoption the two old enemies, growth and the environment are reconciled seems to be lagging:

> The Brundtland report after all, focuses less on the negative consequences of economic growth on the environment than on the effects of environmental degradation on growth and potential for growth. It is growth (read: capitalist market expansion), and not the environment, that has to be sustained. Furthermore, because poverty is a cause as well as an effect of environmental problems, growth is needed with the purpose of eliminating poverty, with the purpose, in turn of protecting the environment.

The world bank played an important role in the formative years of the Sardar Sarovar project and in this context Ashish Nandy (*Traditions, Tyrrany and Utopia* (Oxford University Press, New Delhi, 1987) (author's emphasis) writes that "the representation of the third world as a child in need of adult guidance was not an uncommon metaphor and lend itself perfectly to the development discourse. The infantilisation of the third world was integral to development as a "secular theory of salvation".

The big question is can there be development alternatives? The post structuralist view says:

> ...since the middle and late 1980s, for instance, a relatively coherent body of work has emerged which highlights the role of grassroots movements, local knowledge, and popular power in transforming environment. The authors representing this trend state that they are interested not in development alternatives but in alternatives to development, that is, the rejection of the entire paradigm altogether.

The present case can be related with the two 'D's *i.e.*, development and displacement and the commendable role of the judiciary in addressing the issues arising thereof, though as a matter of comment the author has taken the liberty to view it from a different lenses.

Stanzin Chostak

Competition Commission of India* v. *Co-ordination Committee of Artists and Technicians of W.B. Film and Television

2017(3) SCALE 511

Decided on March 7, 2017

The development of Competition law jurisprudence in India is in a nascent stage. The objective of the competition law includes the promotion of a fair competition in the market which would result in the welfare of the consumer of both goods and services. Competition Commission of India (CCI) attempts to interpret the provisions of the legislation from the economic angle many a times. This ruling of the apex court interpreted the substantive provisions under the Competition Act, 2002 for the first time which will act as a binding precedent for the fundamental question of definition of "market". The term "market" is very

significant for the determination of the rest of the provisions like anti-competitive agreements having appreciable adverse effect, abuse of dominance *etc.* However, the court interpreted the term 'market' under section 3 and 2 (r) of the Competition Act and equated both as 'relevant market'. Generally, the term 'relevant market' is used by the CCI in the context of abuse of dominance and merger review so as to assess dominance in a specific market for further analysis. On the other hand, the term 'market' is used in the context of horizontal and vertical agreements in sections 3 (3) and 3(4) respectively. Therefore, it is not required for the CCI to define the 'relevant market' for investigation under section 3 (3) and 3 (4) to determine anti-competitiveness of horizontal agreements. This ruling by the apex court now places burden on the CCI to define a comprehensive relevant market in all cases of investigation under section 3. It is to be noted that the words of the statute does not intend so if the literal interpretation of the definitions in the relevant sections are made. Moreover, CCI in *Cement Cartel* case (Re: *Alleged Cartelization by Cement Manufacturers* v. *Shree Cement Limited*, RTPE No.52 of 2006) held that determination of relevant market is not a pre-requisite to analyse cartelisation and that such distinction between 'market' and 'relevant market was intentional by the legislature.

In this case, the apex court upheld an appeal by the CCI against an order of the Competition Appellate Tribunal (COMPAT) in a case of alleged cartelization by members of a film and television artists' trade union in the State of West Bengal. CCI held that trade unions are not exempted under section 3 of the Act and by restricting the telecast of the Hindi serial *Mahabharat* dubbed in Bengali, the Eastern India Motion Picture Association and the Coordination Committee of Artists and Technicians of West Bengal Film and Television Investors violated the provisions of section 3 (3)(b) of the Competition Act. This provision prohibits agreements between competing enterprises, which limits or controls production, supply, market, technical development, investment or provision of services. On appeal, the COMPAT, agreeing with a dissenting minority order of the CCI, narrowed the relevant market to the market for 'telecasting of dubbed serials on the television in West Bengal'. The COMPAT also agreed with the minority order in holding that the scope of section 3 (3) (b) covered only agreements between competitors which, *inter alia*, restricted the production and distribution of goods and services. In the present case, the members of the trade unions, being artists, technicians etc were not competitors in the market for telecasting of dubbed serials on the television in West Bengal.

The apex court held that the acts of the co-ordination committee deprived consumers from exercising their choice and hindered competition in the market by barring dubbed television serials from exhibition on television channels in West Bengal, thus violating the provisions of section 3(3)(b) of the Competition Act, 2002. This decision of the apex court by widening the scope of 'relevant market' may generate major repercussions in the growing field of competition law which makes binding precedent to be adhered by the DG, CCI and the COMPAT to prove the 'relevant market' in all cases of Competition law including anti-competitive agreements. The court overlooked the nuances of the issue before it while upholding the interests of the consumers to exercise their choice of services offered by the entertainment industry. The requirement of defining a 'relevant market' may cause significant delays in the working and already slow enforcement mechanism of the CCI.

Susmitha P Mallaya

Savita Sachin Patil* v. *Union of India

2017(2) RCR (Civil) 326

Decided on February 28, 2017

In this quarter, four women went to the Supreme Court to enforce their right to reproductive autonomy, seeking termination of their pregnancies. They all had crossed the 20 weeks limit of the Medical Termination of Pregnancy Act, 1971 and that is why the permission

from the court was required for terminations. All the cases came before the bench of S.A. Bobde and L. Nageswara Rao JJ. Out of the four cases, permission was granted only in two (where the fetus was diagnosed with conditions which were not compatible with extra-uterine life).

In the case under review, 37 year old Savita Sachin Patil, into 26 weeks of pregnancy, went to court seeking the permission to terminate the pregnancy. The fetus was diagnosed with Trisomy 21/ Down's Syndrome. The court noted that in all such cases where the 20 week limit is crossed, permission to terminate is granted when "two important considerations are involved- (i) danger to the life of the mother, and (ii) danger to the life of the fetus." The second consideration, it may be noted, is not provided in the MTP Act, 1971 but is evolved through judicial decisions.

In the present case, the court perused the medical report and found that none of the two considerations were applicable. The medical board stated that there was no risk to mother's life but it is likely that the fetus, if born would have mental and physical challenges. In the light of this expert evidence the court denied the permission to terminate the pregnancy since there was no danger to the life of the woman. Moreover, the court observed that not every child with

Down's Syndrome has low intelligence, rather "intelligence among people with Down Syndrome is variable and a large proportion may have an intelligent quotient less than 50 (severe mental retardation)."

This case may appear a significant development in the struggle of disability rights activists who have expressed concerns about the technological advancements in imaging and testing which are leading to reproductive choices which seek to eliminate the diversity of humankind. Their argument is that the right to self-determination in the context of disability would include their right not to be eliminated before being born. However, my argument is that the court missed an opportunity to conceptually address the core issue at the heart of this case: to what extent should a woman's right to reproductive autonomy be affected/ curtailed by the diversity argument?

In strictly following the black letter of law, the court displayed complete judicial apathy towards the woman. The order gives us no insight on who this woman was? Why did she discover about the condition of Trisomy 21 so late in the pregnancy, when ordinarily the 12 week ultrasound detects this? Did she not have access to these medical tests? Did she receive any counseling by the medical practitioners after the diagnoses where meaning, implications and possibilities of a decent life with Down's Syndrome were explained to her? Did the court direct her for any such counseling once she was denied the right to her reproductive choice? Was an attempt made to engage with the woman (and her family) in order to make the diagnosis bearable and acceptable? Did the court try to ascertain whether the family has support systems to raise a child with down's syndrome? Was the family guided in any manner by directing them to state support in this regard?

The judges- both male- might say it is not for them to ask these questions; the job of the court is to apply the law, whatever the law is. But the fact that the order does not consider these issues as significant explains a lot about how juristic techniques erase women's subjectivity from the law.We need to reimagine law and adjudication if justice is to speak to the life, experience, pain and suffering of the one who stands before the law.

Latika Vashist

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